other labourer decided not to wait for the boat but to cross the river by hauling themselves through the water by means of a wire rope which had been stretched across the river and which was used for transporting the felled timber from one bank to the other. The other labourer succeeded in getting to the opposite bank, but the deceased lost his grip of the wire rope, became overwhelmed by the current running at the time and was drowned.

The Commissioner for Workmen's Compensation awarded $3,200 to the deceased's widow and minor children against the appellant.

It was argued for the appellant that the deceased's death was brought about by his own foolhardy act and that his employer, having provided a safe means of crossing the river by boat, was not liable to pay compensation.

Held: the deceased's action was neither a foolhardy risk nor a highly dangerous course to adopt. The appellant had not, at the time there was need, provided any other means of crossing the river, and the compensation was rightly awarded.

WORKMEN'S COMPENSATION APPEAL.

Ernest Jeff for the appellant.

M. R. Naidu (Deputy Commissioner for Labour) for the respondents.

Cur. Adv. Vult.

Abbott J. : — This is an appeal from the Court of the Commissioner for Workmen's Compensation at Seremban.

A certain Cheng Kai Seng, hereinafter called the deceased, was employed, together with five other labourers, by the appellant to fell timber on the other side of a river being about 130 feet wide. In order to reach the place where the timber was to be felled the labourers had to cross the river and to re-cross it when their day's work was finished. The appellant had provided two methods of crossing the river, namely, by means of a tree which had been felled so as to make a bridge and a boat. At the material time the river was in flood and the felled tree was useless for its purpose by reason that it was totally submerged. On the day in question the deceased and his fellow-workmen had finished their day's work and the time had come for them to cross the river in order to proceed to their homes. The boat was on the far side of the river and they were unable to use it. The boat was in charge of another of the appellant's employees and he was not there at the time when the labourers wished to cross over to the other bank. It is true to say that they were expecting the man to come. The deceased and one other labourer appeared to have decided not to wait for the boatman but to cross the river. A wire rope had been stretched across the river and was used for transporting the felled timber from one bank to the other for eventual removal — the deceased and another labourer decided to cross the river by hauling themselves through the water by means of the wire rope. The other labourer proceeded first and succeeded in getting to the opposite bank. The deceased followed and it appears that he lost his grip of the wire rope, became overwhelmed by the current running at the time and was drowned.

The deceased's widow and four minor children laid a claim under the Workmen's Compensation Enactment (Cap. 155) and the learned Commissioner, having heard the evidence decided that the accident took place arising out of and in the course of the deceased's employment. A sum of $3,200 was awarded to the applicants against the appellant.

In this Court it was argued on the part of the appellant that the deceased's death was brought about by his own foolhardy act and that his employer, having provided a safe means of crossing the river by boat, is not liable to pay compensation. It was not argued, and rightly, that, because the deceased's work had been finished for the day, he was no longer in the employment of the appellant.

The sole issue is as to whether or not the deceased met his death by engaging in a foolhardy hazard or a hazard contrary to the instructions of his employer or contrary to such instructions as a prudent employer would have given him. I repeat that the boat was not available to the deceased and since he was entitled to proceed to his home he took the only route which was then ready at hand and available to him to return. The other labourer had safely proceeded by that means and the deceased apparently had no reason to suppose that he might have been unsuccessful in crossing the river. It does not appear to me to have been either a foolhardy risk or a highly dangerous course to adopt. The fact that he lost his grip on the wire rope was fortuitous. It cannot be said that the appellant had, at the time that there was need, provided any other means of crossing the river and I am therefore of the opinion that compensation was rightly awarded and the appeal therefore must be dismissed.

Appeal dismissed.

LEE IT LEO v. REGINA

[A. Cr. J. (Whitton J.) October 12, 1954]

[Singapore — Magistrate's Appeal No. 141 of 1954]

Common Gaming Houses Ordinance (Cap. 30), ss. 4(c) & 12 — Assisting in the carrying on of a public lottery — Chap Ji Ki schedules found in packet dropped by accused — Search warrant issued by Justice of the Peace — Description of person in search warrant — History of exhibits, etc. — Prosecution eye-witness giving expert evidence.

In this case the appellant was convicted under s. 4(c) of the Common Gaming Houses Ordinance and was sentenced to a fine of $2,000 or 6 months' r.i. in default. The facts briefly were: about 3.40 a.m. on June 15, 1954, appellant was stopped by two detectives in front of a house in Joo Chiat Place. The appellant threw a cigarette packet from his right hand and this packet was found to contain Chap Ji Ki schedules. When the appellant was searched later nothing was found on him.

He appealed on three grounds: (1) the search warrant did not conform with s. 12 of the Ordinance in that the description of the person to be searched in the warrant was, "a male Chinese at a public place along Joo Chiat Road"; (2) it was not conclusively proved that the Chap Ji Ki schedules produced in Court were the same documents which one of the detectives saw at the time the appellant was apprehended and which were alleged to have been dropped by the appellant; (3) the police officer who took part in the apprehension and arrest of the appellant gave expert evidence.

Held: (1) where a person is not expressly named the Justice of the Peace should satisfy himself that the description in the warrant will be adequate in the circumstance of the particular case to ensure that the person in due course searched will be the person regarding whom he has received the information on oath required by the Ordinance; (2) prosecuting officers must bear in mind the importance in all cases of leading evidence as to the full history of exhibits, documentary or otherwise, from the time they first came into Police custody until they are produced in Court; (3) the practice of a prosecution eye-witness giving expert evidence is not open to the same objections as is the practice of a prosecution witness acting as an interpreter. The position in the case of an eye-witness giving expert evidence is that the Court must consider, whether there is any motive for bias, and give due weight to its conclusions on this point in assessing the value of the evidence given.

Case referred to:—

(1) *Chong Chin Yuan v. Public Prosecutor* (1949) M.L.J. 263.

MAGISTRATE'S APPEAL.

A. J. Braga for the appellant.

J. F. McWilliam (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Whitton J. : — The appellant was convicted under Section 4(c) of the Common Gaming Houses Ordinance of assisting in the carrying on of a public lottery and was sentenced to a fine of $2,000 or 6 months' R.I. in default.

Briefly the facts relied on by the Prosecution and accepted by the Magistrate were these. About 3.40 a.m. on 15th June 1954 the appellant was stopped by two detectives in front of house No. 89 Joo Chiat Place. The appellant threw a cigarette packet from his right hand on to the ground after he was stopped. The dropped packet was picked up by one of the detectives and found to contain five Chap Ji Ki schedules. The appellant was later searched but nothing more was found on him.

The first ground of appeal was that a search warrant issued by a Justice of the Peace on the authority of which the detectives searched the appellant did not conform with Section 12 of the Ordinance. The description of the person to be searched in the warrant was, "a male Chinese at a public place along Joo Chiat Road." *Braddell* in his "Common Gaming Houses" (2nd Ed.) says at p. 27: "he" (i.e. the Justice of the Peace) "must expressly name or sufficiently describe the premises or person or persons to be searched." The learned author does not cite any authority for this statement, so I think it is fair to assume he is only repeating a general principle which can be taken to apply to the issue of search warrants generally, and it seems to me that all this means is that where the person is not expressly named the Justice should satisfy himself the description in the warrant will be adequate in the circumstances of the particular case to ensure that the person in due course searched will be the person regarding whom he has received the information on oath required by the Ordinance. In this case the description appears to have been adequate.

The second ground of appeal was that it was not conclusively proved that the Chap Ji Kee schedules produced in Court were the same documents which one of the detectives saw at the time the appellant was apprehended and which were alleged to have been dropped by the appellant. The evidence for the Crown was certainly deficient in that it did not give the history of these documents from the time the detectives took possession of them up to the time of their production in Court, and in some cases this omission might have proved a fatal defect, but in the present case I do not think there is any ground to suspect the documents had been altered in any way while in Police custody, and accordingly I do not think any question of a miscarriage of justice arises in this instance. Prosecuting officers must bear in mind the importance in all cases of leading evidence as to the full history of exhibits, documentary or otherwise, from the time they first came into Police custody until they are produced in Court.

The final specific ground of appeal against conviction was based on the fact that one of the Police officers who took part in the apprehension and arrest of the appellant gave expert evidence. In his submissions on this aspect of the case Mr. Braga relied on *Chong Chin Yuan v. Public Prosecutor*[1], but in my opinion the practice of a prosecution eye-witness giving expert evidence is not open to the same objections as is the practice of a prosecution witness acting as an interpreter, the procedure which was the subject of adverse criticism in *Chong Chin Yuan's*[1]

case. In my view the position in the case of an eye-witness giving expert evidence is that the Court must consider, as it does with any other sort of witness, whether there is any motive for bias, and give due weight to its conclusions on this point in assessing the value of the evidence given. I consider then this ground of appeal also must fail.

The conviction is, therefore, confirmed. I feel, however, with regard to sentence that it is not certain the learned Magistrate was right in apparently assessing the appellant, who is a trishaw-rider, was an "operator" as opposed to a mere "runner" in connection with this business. The Magistrate may have been right, but I think in the absence of fuller information it would be proper in assessing sentence to proceed on the basis more favourable to the appellant. I have, accordingly, decided to reduce the fine to one of $500 or 2 months' R.I.

Order accordingly.

Solicitors: *Braga & de Souza.*

CHYE AH SAN v. REGINA

[A. Cr. J. (Spenser Wilkinson J.) May 31, 1954]

[Penang — Criminal Appeal No. 10 of 1954]

Excise Enactment (Cap. 133), s. 51 — Statements to Customs Officers — Warning by Customs Officer before recording statement — Principle of nemo tenetur seipsum accusare — Question of threat or warning before recording statement — Evidence Ordinance, s. 24 — Differences between English law and local law on incriminating statements — Questions tending to criminate accused — "Information" — Meaning of — Judges' Rules — Breach of — Duty of prosecution to place all material evidence before the Court.

Where a person in authority, such as an Excise Officer, says, not that the accused is not bound to say anything but, quite the reverse, that he is bound to say everything, it is impossible to look upon the statement so obtained as being voluntary (**Rex v. Santokh Singh**(7) followed).

The maxim *nemo tenetur seipsum accusare* in this country is enforced in a different way from that in England. In England a witness in a Court of Law is not bound to answer questions which may tend to criminate him. In Malaya under the Evidence Ordinance a witness is bound to answer all questions even though they may tend to criminate him, but if he is forced to answer such questions then no proceedings can be taken against him based upon his answers except proceedings for perjury.

Section 51 of the Excise Enactment has reference to information regarding the activities of other persons and does not include self-incriminatory statements regarding the activities of the person from whom the information is sought. Section 51 does not intend to abrogate the general maxim *nemo tenetur seipsum accusare*, but was intended to be read subject to that maxim: its purpose and intention are to obtain information in regard to the activities of persons other than the person interrogated. If in the course of obtaining such information the person interrogated makes admissions amounting to a confession then such admission cannot be used in evidence against him. The information so obtained is intended to be used in the same way as evidence obtained under s. 124 of the Criminal Procedure Code, as a starting point for collecting evidence *aliunde* of offences thus disclosed to have been committed.

An Excise Officer when carrying out his duties of enforcing the law is in a very similar position to that of a Police Officer in England. Apart from any specific provision of the Enactment there is no reason why such an Officer should not ask questions from persons whether suspected or not from whom he thinks useful information can be obtained, as laid down in the Judges' Rules; and as neither s. 124 of the Criminal Procedure Code nor ss. 25 and 26 of the Evidence Ordinance apply to Customs or Excise Officers there is nothing in law to prevent the answers given to them by a person subsequently accused of an offence from being used in evidence provided the Court is satisfied that those answers were voluntarily given. Where there is a breach of the Judges' Rules the trial Court can in its discretion refuse to admit the statement (**Reg. v. Bass**(15) followed).

Whether or not an accused person has confessed it remains the duty of the prosecution to place all the material evidence before the Court with the proviso that they are not compelled to call witnesses whom they have good reason to think are not witnesses of truth or are likely to be hostile; and when such witnesses are not called they should usually be offered for cross-examination, unless there is some good reason for not doing so.

Cases referred to:—

(1) *Public Prosecutor v. Koay Oy Bin* Penang — Criminal Appeal No. 15 of 1950 (unreported).

(2) *Regina v. Scott* Dears & Bell 47; 169 E.R. 909.

(3) *Public Prosecutor v. Tay Yam Peng* (1951) M.L.J. 144; 2 M.L.R. 117.

(4) *Tan Shu En v. Public Prosecutor* (1948) M.L.J. 196.

(5) *Rasiah v. Public Prosecutor* (1931-32) F.M.S.L.R. 45.

(6) *Public Prosecutor v. Soh Tuan Cheung* (1949) M.L.J. 261.

(7) *Rex v. Santokh Singh* (1933) M.L.J. 178; (1933) S.S.L.R. 147.

(8) *Rex v. Treacy* (1944) 2 All E.R. 229 at 236.

(9) *Ibrahim v. Rex* (1914) A.C. 599.

(10) *Re Chops Loh Ban Chuan & Chuan Bee* (1933) M.L.J. 286.

(11) *Re Mohamed Yusoff Meera Hussain & Anor.* (1954) M.L.J. 45.

(12) *Chong Chin Yuan v. Public Prosecutor* (1949) M.L.J. 262.

(13) *Heah Chin Kim v. Public Prosecutor* Kedah — Criminal Appeal No. 13 of 1954 (unreported); Noted (1954) M.L.J. xxxiii.